

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6914 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

G M NAIDU

Versus

STATE OF GUJARAT

Appearance:

MR AK CLERK for Petitioner

MR VM PANCHOLI, AGP, for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 07/07/1999

ORAL JUDGEMENT

The petitioner was appointed as a typist-cum-clerk in Gujarat State Cooperative Tribunal on 6.5.1961. The petitioner was promoted to officiate as a Stenographer in the leave vacancy of Stenographer in the Cooperative Tribunal. On 5.12.1964 the office of the Food Controller, Gujarat State, was established by the State Government. The Food Controller had invited the

applications for the post of Stenographer. The petitioner submitted his application pointing out that he had passed the SSC in the year 1958 and had passed Government Commercial Course Examination of the Gujarat Government in the year 1963 with a speed of 100 wpm in shorthand and 40 wpm in typewriting. On 10.12.1964 the Food Controller requested the Cooperative Tribunal to transfer the petitioner to the office of the Food Controller so that the petitioner could be appointed to officiate as a Stenographer. Accordingly the President of the Cooperative Tribunal placed the services of the petitioner at the disposal of the Food Controller with immediate effect as per the order dated 16.12.1964. On 21.12.1964 the Food Controller passed the order appointing the petitioner as a stenographer to the Food Controller with effect from the date of joining i.e. 17.12.1964. On 29.3.1965 the Food Controller informed the State Government that the post of Stenographer Grade-II in the office of Food Controller, Gujarat State, created vide GR dated 23.11.1964 and continued thereafter was filled in by appointing the petitioner as a temporary measure and the same may be approved as a special case. The Food Controller proceeded on the footing that the post may be filled in with a Stenographer selected by the GPSC but office of the Food Controller was not brought within the purview of the Gujarat Public Service Commission in the first place. The General Administration Department of the State Government, however, informed the Food Controller by letter dated 27.8.1965 (Annexure-F) that recruitment of Stenographer Grade-II in District Office and Regional Offices of all Departments which are not within the purview of GPSC is being done in accordance with the Centralised Recruitment Scheme as per the Government Resolution dated 24.7.1964 and that pending availability of such candidates recruitment may be done through employment exchange or from other sources if the employment exchange has no suitable candidates to offer. Ultimately, by order dated 10.4.1967 (Annexure-A) the Office of the Food Controller, Gujarat State, was brought within the purview of the Public Service Commission. It appears that thereafter the post of Stenographer Grade-II was abolished from the office of the Food Controller as per Government Order dated 6.1.1971 and the petitioner was appointed as Stenographer Grade-II in the office of the Inspector General of Prisons as per the order dated 12.1.1971 (Annexure-I), issued by I.G. Prisons. By order dated 1.12.1987 (Annexure-P) the petitioner was confirmed on the post of Personal Assistant to IG Prisons in the scale of Rs.1600-2660. Thereafter the Government of Gujarat issued Resolution dated 5.7.1991 providing the scheme of

higher grade scales to deal with the problem of absence/restricted chances of promotion under which all the employees in Class-III and Class-IV services were to be granted higher grade pay scale on completion of 9 years of service and still higher scale on completion of 18 years of service provided that the employee had not received more than two promotions/higher grade scales earlier. The petitioner therefore applied for such higher scale in view of the length of service put in by him. The IG Prisons accordingly passed the order dated 30.12.1991 (Annexure-T) giving the petitioner the first higher pay scale of Rs.2000-3500. When the IG Prisons forwarded the said order to the State Government, by communication dated 9.3.1992 (Annexure-U page 56) the State Government communicated its decision that the petitioner was not entitled to get any higher grade as the petitioner was non PSC Stenographer and that irregular/non PSC Stenographers were not entitled to get higher pay scale. The petitioner made a representation dated 26.3.1992 which came to be rejected by the order dated 14.5.1992 (Annexure-V page 64) stating therein that the petitioner was irregular/non PSC stenographer and till that date the petitioner's services were not regularised. The petitioner had availed of three chances for passing the test conducted by the PSC but the petitioner was not declared as having passed the test. Under the rules, the petitioner's services were not regularised and that at the most one more special test can be held for which request was made to the PSC. The petitioner filed the present petition in September 1992 for challenging the aforesaid communications/decisions dated 9.3.1992 (Annexure-U) and 14.5.1992 (Annexure-V).

2 The contention raised in the petition is that since the office of the Food Controller was brought within the purview of Public Service Commission only in the year 1967, the petitioner's appointment in the office of the Food Controller with effect from 17.12.1964 could not be said to be irregular and, therefore, respondents have illegally denied the benefit of higher pay scale to the petitioner though the petitioner had already put in more than 30 years of service in the Government. The petitioner further contended that the office of the Food Controller was established as an independent office with effect from 5.12.1964 and it could never be considered to be a District level or Regional Office so as to fall within the purview of Centralised Recruitment Scheme.

3 In response to the notice issued by this Court, Shri Harishbhai Lalji Madiya, Under Secretary to the Government of Gujarat, filed affidavit-in-reply

contending that as per the Government Resolution dated 24.7.1964 (Annexure-G page 28) the Government had sanctioned the schemes for recruitment of Stenographers (Grade-II), Steno-Typists in Districts and Regional Offices of all departments which are not within the purview of GPSC. Initially, the post of Officer on Special Duty was created in the Directorate of Civil Supplies under Government Resolution dated 20.11.1964 and the same was redesignated as the Food Controller under the G.R. dated 5.12.1964. The Officer on Special Duty was part of the Directorate of Civil Supplies which was within the purview of the GPSC with effect from 1.5.1960 for the purpose of recruitment of Stenographers. According to G.R. dated 5.1.1965 the Food Controller was required to look after the affairs of civil supplies work of Ahmedabad city only and it was after appointment of the petitioner as Stenographer Grade-II on 17.12.1964 that the Food Controller was declared as the Head of the Department under the G.R. dated 30.1.1975. The petitioner's contention that the office of the Food Controller was a State level office at the time of the petitioner's appointment is denied and it is contended that the Food Controller was required to look after the affairs of Ahmedabad city only and the status of the office was similar to the status of a regional office at the time of the petitioner's appointment as Stenographer Grade-II and hence the office of the Food Controller was within the purview of the Centralised Recruitment Scheme. In para 14 of the reply it is stated as under:-

"Since the petitioner is an irregular (non P.S.C) Stenographer and his services have not been regularised till date, the Government vide its letter dated 9.3.1992 has very rightly refused to grant higher scale to the petitioner."

It is further stated in the reply affidavit that the petitioner was granted two chances to pass PSC examination but the petitioner failed to pass the said examination for regularisation.

4 Thereafter the petitioner filed rejoinder affidavit pointing out that as far back as on 20.3.1965 the General Administration Department of the State Government had informed the Food Controller that it was not possible for the General Administration Department to make available Stenographer Grade-II since the office of Food Controller is not brought within the purview of GPSC and that, if necessary, proposal may be made to bring the Office of the Food Controller within the purview of GPSC. The petitioner also obtained leave of

the Court to amend the petition pointing out the case of Shri Rajnikant H Shah who was appointed as Stenographer Grade-II in the office which was admittedly within the purview of the GPSC at the time of appointment of the said person and even then without his passing any regularisation test, the service of the said person was treated as regular by the Government. The petitioner therefore, contended that the petitioner's case was much stronger inasmuch as the office of the Food Controller was not within the purview of the GPSC or the Centralised Recruitment Scheme. The petitioner also placed reliance on the decision of the Division Bench of this Court in the case of T.H.PATHAK V. STATE OF GUJARAT & ORS. (Special Civil Application No.764 of 1994 Annexure-W page 65) as confirmed by the Hon'ble Supreme Court in E.C.Patel v. Smt. T.H.Pathak (AIR 1977 SC 101).

5 On behalf of the respondents further affidavit-in-reply came to be filed by Shri J.S.Dave, Deputy Secretary, General Administration Department, on 16.2.1999 giving the following justification for regularisation of Rajnikant Shah:-

"3. I say that Mr Shah was appointed provisionally as IIInd Grade Stenographer with effect from 3.7.1968 in the office of the Settlement Commissioner. Later on, he was brought on the establishment of Secretariat with effect from 1.2.1969, because the competent Stenographers were not available and the results of competitive examinations were shockingly poor. As a stenographer he proved an excellent steno endowed with spped and accuracy in stenography in English. In view of his competence and due to the paucity of competent stenographers, a proposal to absorb him as a regular Steno in Secretariat was submitted to the Gujarat Public Service Commission, his services were regularised as a special case under rule 16 of the aforesaid rules."

It is also contended in the further affidavit-in-reply that even though the petitioner failed to pass regularisation test on 3 occasions, one more opportunity was given to such stenographers to get their services regularised but the petitioner did not avail of the fourth chance.

4 At the hearing of this petition, the learned counsel for the petitioner has reiterated the averments and submissions made in the petition and the rejoinder

affidavit and in particular has raised the following contentions:-

- (1) The respondents while rejecting the petitioner's application for higher pay scale under the GR dated 5.7.1991 had all along contended that the petitioner was irregular because he was a non PSC stenographer. The very fact that the office of the Food Controller came to be first brought within the purview of PSC for the purpose of recruitment of Stenographer only on 10.4.1967 (Annexure-H) shows that defence of the respondent was untenable. It was therefore not open to the respondents now to turn around and contend that the office of the Food Controller was within the purview of Centralised Recruitment Scheme (CRS) prior to 10.4.1967.
- (2) In any case, the respondents have also erred in proceeding on the basis that prior to 10.4.1967 the office of the Food Controller was within the purview of C.R.S. on the strength of the G.R. dated 26.7.1964. Reliance is placed in this connection on the decision of the Honourable Supreme Court in the case of P.C.Patel v/s Smt. T.H.Pathak (AIR 1977 SC 101) to contend that all offices which were not covered within the purview of PSC were not necessarily covered by the CRS and also on the Government Resolution dated 5.12.1964 which indicated that the office of the Food Controller was a state level office.
- (3) The petitioner's appearing at the regularisation test in the past did not preclude the petitioner from contending that the petitioner was not an irregularly recruited stenographer and that therefore, the petitioner could not be denied the higher pay scale under the G.R.dated 5.7.1991 (Annexure-Q).

5. On the other hand, Mr Pancholi, learned Asst.Government Pleader has submitted as under:-

- (1) The office of the Food Controller was a part of the Directorate of Civil Supplies which was within the purview of the GPSC.
- (2) Till the office of the Food Controller was brought within the purview of PSC on 10.4.1967, the said office was within the purview of the

Centralised Recruitment Scheme and that in any case at the time of the petitioner's appointment on 17.12.1964 the office of the Food Controller was a District level or Regional Office as the work of the Food Controller was confined to Ahmedabad City and therefore it squarely fell within the scope of the Government Resolution dated 24.7.1964 so as to attract the applicability of the CRS.

(3) The petitioner had already availed of 3 chances for passing the regularisation test held by GPSC/Department and since the petitioner had failed to pass the test, it was not open to the petitioner to contend that the petitioner was not an irregularly recruited stenographer.

6 As regards the contention of the learned counsel for the petitioner that at the time of his appointment as Stenographer in the office of the Food Controller, the said office was not within the purview of the Public Service Commission, the same will have to be accepted in view of the Government Resolution dated 10.4.1967, at Annexure-H to the petition. The very fact that the said office was specifically included in the list of offices falling within the purview of PSC for recruitment of Stenographer would clearly indicate that prior to 10.4.1967 the office of the Food Controller was not within the purview of the GPSC. The contention urged on behalf of the respondents that the office of the Food Controller was a part of Directorate of Civil Supplies which was already within the purview of PSC cannot be accepted. In the case of P.C. Patel (supra) the Honourable Supreme Court had an occasion to consider a similar contention which was raised by the State Government that creation of Directorate of Civil Supplies (Accounts) merely amounted to setting up a regional office in the Directorate of Civil Supplies. This Court negatived the said contention since Directoror of Civil Supplies (Accounts) earlier set up in State of Bombay did not continue to be so at the time of introduction of the scheme for Recruitment of Stenographers through the PSC or through the CRS and Directorate of Civil Supplies (Accounts) was for the first time brought within the purview of PSC only on 1.3.1969. Since the said Directorate was not mentioned in the Scheme for Recruitment through the PSC, this Court held that the Directorate of Civil Supplies (Accounts) was not within the purview of PSC. The very fact that even the State Government in the GAD had made it clear in their letter dated 20-3-1965 (Annexure-K page 142) that the office of

the Food Controller was not brought within the purview of PSC clinches the issue in favour of the petitioner.

7 That takes us to the contention raised by Mr V.M.Pancholi, learned AGP, that even if the office of the Food Controller was not within the purview of PSC, it was certainly within the purview of the Centralised Recruitment Scheme because the Government Resolution dated 24.7.1964 was issued to cover all other offices within the purview of CRS if they did not fall within the purview of PSC. However, this is too a broad contention which cannot be straightway accepted in view of the following language employed by the G.R.:-

"In supersession of Government orders, if any, Government is pleased to sanction the accompanying scheme for recruitment of Stenographers (IIInd grade) and Steno-typists in districts and Regional Offices of all Departments which are not within the purview of Gujarat Public Service Commission."

Hence, an office would not fall within the Centralised Recruitment Scheme merely because it does not fall within the purview of PSC. The office will have to satisfy the further test of being a District Office or a Regional Office. There is a serious controversy on the particular question whether the office of the Food Controller was a State level office, as contended on behalf of the petitioner, or a District or Regional Office, as contended on behalf of the respondents. In the reply affidavit dated 30.1.1993 it is contended that at the time of petitioner's appointment the office of Food Controller was required to look after affairs vis-a-vis of Ahmedabad city only and the status of office was similar to the status of a regional office. However, the learned counsel for the petitioner has pointed out that while initially there was only a post of Officer on Special Duty in the senior timescale of IAS, as created by the Government Resolution dated 20-11-1964, the post was redesignated as Food Controller, Gujarat State, vide G.R.dated 5.12.1964 wherein it was specifically mentioned, "the Food Controller should be in charge of informal rationing scheme in Ahmedabad and will also assist and guide the Collectors concerned in introducing informal rationing and household card system in the cities having a population of more than one lakh and also any other place where Government may decide to introduce rationing in future."

It is clear from the underlined words that apart from the charge of informal rationing scheme in Ahmedabad, the Food Controller was also assigned duties at State level by assisting Collectors concerned in introducing information rationing and household card system in cities having population of more than one lakh. Hence, State level duties were conferred upon the Controller of Food Supplies by the Govt. Resolution dated 5.12.1964. The words in the said G.R. assigning further duties to the Food Controller at any other place where the Government may decide to introduce rationing in future did not whittle down the scope and area of the functions and duties of the Food Controller. It must therefore be held that Office of the Food Controller was not a District level office or a regional level office, as contended by the learned AGP. In this view of the matter, the office of the Food Controller did not fall within the purview of the Government Resolution dated 24.7.1964 and therefore it remained outside the Centralised Recruitment Scheme. This being so, it has to be held that the office of the Food Controller was neither within the purview of GPSC nor within the purview of CRS. The reasoning adopted by this Court is in consonance with the decision of this Court in the case of T.H.Pathak v. State of Gujarat (Special Civil Application No.767 of 1994) as confirmed by the Apex Court in the case of P.C.Patel v. Smt. T.H.Pathak AIR 1977 SC 101.

8 It is further required to be noted that in the letter dated 18-9-1973 (Annexure-J page 31) the State of Gujarat in the Home Department had informed I.G.Prisons that by General Administration Department Circular No.1067-K dated 21.11.1967 it was specifically stated that the offices which were outside the purview of the PSC already stood covered under the Centralised Recruitment Scheme and recruitment was required to be done accordingly. Mr Pancholi therefore submits that at least by the said Government Circular it was made clear that all offices not covered by the PSC were included in the CRS Scheme even if they were not District or Regional offices. However, this contention cannot be accepted because the petitioner was appointed as a Stenographer Grade-II in the office of the Food Controller on 17.12.1964 and therefore by a Circular issued almost three years thereafter the petitioner's appointment cannot be invalidated by retrospectively applying the circular to the petitioner or any other person. When the petitioner was appointed as a Stenographer Grade-II in the office of the Food Controller on 17/21-12-1964, the relevant Resolutions/Circulars which were holding the

field were the Resolution including the Office of the Director of Civil Supplies at Ahmedabad within the purview of PSC and the G.R. dated 24.7.1964 including the District and Regional Offices within the purview of the CRS, if such offices were not included within the purview of PSC. Hence, at the time of the petitioner's appointment as Stenographer Grade-II in the office of Food Controller, the said office was neither within the purview of PSC nor within the purview of Centralised Recruitment Scheme. It, therefore, cannot be said that the petitioner's appointment was irregular. It is also further required to be noted that the petitioner's initial appointment was in the Gujarat State Cooperative Tribunal on 6.5.1961 and the said office was brought within the purview of PSC only with effect from 1.7.1963 (vide Annexure-Y page 143). There is, therefore, considerable substance in the contention urged on behalf of the petitioner that even if for any reason the petitioner's services were to be treated as irregular in the office of the Food Controller, the petitioner could certainly have been repatriated to the office of the Gujarat State Cooperative Tribunal.

9 That leaves only one question to be considered whether the petitioner is estopped from contending that the petitioner was not irregularly appointed stenographer. It is true that in the past the petitioner had appeared in the qualifying test on 3 occasions. Earlier the petitioner had filed Special Civil Application No.1115 of 1978 wherein the petitioner had contended that the petitioner was not irregularly recruited stenographer as the office of the Food Controller was neither within the purview of PSC nor within the purview of the Centralised Recruitment Scheme on the date of the petitioner's appointment and therefore it was prayed that respondents be directed to treat the petitioner as a regular recruit. Ultimately, the said petition came to be withdrawn on 20.7.1978. But even while permitting such withdrawal, the petitioner's contentions were permitted to be kept alive and the same could be agitated thereafter, as specifically mentioned in the said order, which is produced at Annexure-N to this petition. It is, therefore, clear that the petitioner's availing of the chances to clear the regularisation test would not preclude the petitioner from raising the contention that the petitioner was not an irregularly appointed stenographer.

10 In view of the above discussion, the petition is allowed. The impugned orders dated 9.3.1992 at Annexure-U, dated 14.5.1992 at Annexure-V declaring that

the petitioner was an irregular (non PSC) Stenographer are quashed and set aside and the respondents are directed to proceed on the basis that on the date of the petitioner's appointment as a Stenographer Grade-II in the office of the Food Controller, the said office was neither within the purview of the Public Service Commission nor within the purview of Centralised Recruitment Scheme and therefore, the petitioner shall be treated as a regular recruit.

The respondents are further directed to give the petitioner benefit of higher pay scale on the basis of the Government Resolution dated 5.7.1991 which was already worked out by the Inspector General of Prisons as per the order dated 30.12.1991 (Annexure-T). The respondents are directed to fix the petitioner's pay on the aforesaid basis and to pay the petitioner all the arrears of difference of salary and allowances on the said basis till the date of petitioner's retirement on 29.2.1996 and also to fix the petitioner's pension and gratuity and retirement benefits on that basis and to pay the petitioner the arrears of difference of pension and gratuity on that basis and all consequential benefits on that basis.

The respondents are further directed to carry out the aforesaid directions within a period of 3 months from the date of receipt of the writ of this Court or a certified copy of this judgement, whichever is earlier.

Rule is made absolute with no order as to costs.

(mohd)